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February 28, 1995

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### BY HAND DELIVERY

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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FEB 28 1995

Re: Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Albion, Nebraska)  
(MM Docket No. 94-143)

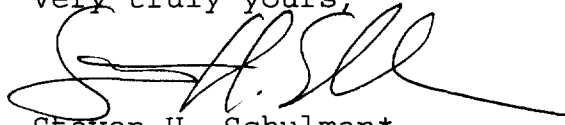
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Caton:

Enclosed on behalf of Citadel Communications Co., Ltd. are Reply Comments to Busse Broadcasting, Inc. in the above-referenced rulemaking proceeding.

In the event there are any questions concerning this matter, please do not hesitate to call.

Very truly yours,

  
Steven H. Schulman\*  
of LATHAM & WATKINS

Enclosure

cc: Mr. John A. Karousos, Acting Chief,  
Allocations Branch  
Mr. Philip J. Lombardo  
Eric L. Bernthal  
Kevin C. Boyle

\* Admitted in Maryland only

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEB 23 1995

In the Matter of )  
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Amendment of Section 73.606(b), )  
Table of Allotments, )  
Television Broadcast Stations. )  
(Albion, Nebraska) )

MM Docket No. 94-143

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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TO: The Chief, Allocations Branch

**REPLY COMMENTS OF CITADEL COMMUNICATIONS COMPANY, LTD.**

While Busse presents a smorgasbord of spurious contentions, its comments advance but three main arguments: (1) that the Commission cannot allot Channel 24 to Albion and license it to Citadel in reliance on Citadel's pledge to continue ABC network service to Albion; (2) that the proposed allotment "makes no economic sense"; and (3) that the proposed allotment "squanders spectrum" and will interfere with future Advanced Television ("ATV") implementation. Each of these arguments is meritless and easily dispatched.<sup>1/</sup>

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1. Busse has fought the Commission's plan to bring competitive commercial television service to Lincoln at every turn, filing no fewer than eight other pleadings in an effort to delay the move of KCAN from Albion to Lincoln. Busse has filed: a Petition for Reconsideration of the Commission's order in *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Albion, Lincoln, and Columbus, Nebraska)*, 8 FCC Rcd 2876 (1993) ("Albion-Lincoln-Columbus Order"), and a Reply to Opposition to Petition for Reconsideration; a Petition to Deny Citadel's application to construct Channel 18 at Albion (File No. BMPCT-930726KH); an Informal Objection to Citadel's application to relocate KCAN-TV Channel 8 to Lincoln (File No. BMPCT-930726KI), and a "Supplement" to that Objection (filed February 14, 1995); and a Petition for Stay of the licensing proceedings (filed November 23, 1994), an unauthorized "Reply" in connection with that petition (filed December 7, 1994), and, finally, an unauthorized "Supplement" to that petition (filed December 21, 1994).

The allotment of Channel 24 to Albion is clearly in the public interest. It allows the Commission to avoid a comparative hearing for Channel 18 at a time when such hearings are on hold indefinitely. Assuming the competing applicant for Channel 18 follows through on its commitment to construct, this proposed allotment will pave the way for Albion's first full-service television station. Moreover, by permitting implementation of replacement ABC service in Albion without indefinite delay for a comparative hearing, it makes possible the prompt implementation of a first competitive commercial television service in Nebraska's capital city and the resolution of a proceeding now more than six years old.

**I. BUSSE'S OBJECTIONS TO THE CITADEL'S PLEDGE TO CONTINUE ABC NETWORK SERVICE ARE MERITLESS**

In the *Albion-Lincoln-Columbus Order* and again in the NPRM, the Commission noted that Citadel's pledge to continue ABC network service in Albion has been a factor in its decision to allow Citadel to change the community of license for KCAN-TV. Busse seizes on this pledge to create two vague arguments against the allotment.

Incredibly, Busse takes it upon itself to object to a programming commitment made by Citadel and relied upon by the Commission in changing KCAN's community of license. Even if Busse were genuinely concerned about the Commission's decision to hold Citadel to its pledge, it ultimately has no standing to assert such a position. *Cf. Lujan v. National Wildlife Fed.*, 497 U.S. 871, 883 (petitioner must show that he himself is "aggrieved" or suffers an adverse effect to have standing to challenge agency determination under Administrative Procedure Act).

The condition places no direct or indirect burden on Busse, nor does it interfere with Busse's network affiliation.<sup>2/</sup> Clearly, this condition has no economic impact upon Busse whatsoever. Therefore, Busse has no standing in this allotment proceeding to assert an objection to the Commission's decision to condition the implementation of service in Lincoln on the fulfillment of that pledge. *See Mount Wilson FM Broadcasters, Inc. v. FCC*, 884 F.2d 1462, 1465 (D.C. Cir. 1989) (in order to have standing to challenge an allotment, petitioner must specify "a concrete, economic interest that has been perceptibly damaged") (citation omitted).

Nor has Busse offered any evidence to suggest that Citadel will not or cannot meet this condition in the absence of indefinite delay in resolution of these proceedings. Citadel hereby reaffirms its pledge to continue ABC network service to Albion by operating Channel 24 as a satellite station of KCAN in Lincoln. Citadel has not, as Busse claims, retreated from its pledge to provide continued ABC service to Albion. It has merely urged the Commission to remove the condition to prevent it from being used in combination with the delay wrought by Busse's pleadings to thwart the implementation of competitive service in Lincoln.

## II. THE ECONOMIC FEASIBILITY OF THE PROPOSED STATIONS IS IRRELEVANT

Busse next contends that the allocation of Channel 24, in addition to the allocation of Channel 18, to Albion "makes no economic sense." The Commission has long held that it will "encourage new allotments where technically feasible and without regard to the economic impact on existing stations." *In re Amendment of*

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2. Busse's station in Lincoln is affiliated with CBS.

*Section 73.202(b), Table of Allotments, FM Broadcast Stations (Chateaugay, New York)*, 9 FCC Rcd 3957 (1994). Busse's comments, while couched in terms of the overall economic feasibility of operating stations at Albion, merely rephrase arguments that have been rejected by the Commission time and time again. Neither the economic viability of Channel 18 nor that of any other station is relevant to this proceeding. *See In re Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cheyenne, Wyoming)*, 8 FCC Rcd 4473 (1993) ("It remains the Commission's policy not to address the potential economic impact of new allotments on existing stations.").

Busse's comments are incorrect as a matter of fact as well. Albion has already proven that it can support the station currently proposed for Channel 24. Citadel plans to operate the station as a satellite of KCAN in Lincoln, just as it currently operates Channel 8-Albion as a satellite of KCAU-TV, Sioux City, Iowa. Moreover, Fant Broadcasting (the competing applicant for Channel 18 at Albion) has presumably concluded that a station in Albion — indeed a full service station — makes economic sense. Busse's speculation to the contrary is irrelevant.

### III. THE ALLOTMENT PUTS VACANT SPECTRUM TO WORK IN THE PUBLIC INTEREST WITH NO ADVERSE IMPACT ON ATV IMPLEMENTATION

Busse claims the proposed allotment "squanders spectrum" by bringing additional service to Albion and competitive service to Lincoln on VHF rather than

UHF.<sup>3/</sup> Rather than squander spectrum, the proposed allotment puts vacant spectrum to use and allows a more efficient use of Channel 8. Adoption of this proposal will allow the prompt introduction of competitive service in Lincoln and result in new service to nearly 700,000 persons. *Albion-Lincoln-Columbus Order*, 8 FCC Rcd at 2878. It may result in competitive service in Albion as well. This is exactly the result contemplated by the Commission in Change of Community License. *See In re Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 3 FCC Rcd 6890, 6891 (change in community of license "will allow changes in the Table of Allotments which better serve the Commission's present allotment priorities, thereby furthering the statutory goal of providing a fair, equitable and efficient distribution of facilities among the several states and communities").<sup>4/</sup>

#### IV. CONCLUSION

The Commission has proposed a pragmatic solution to competing applications for Channel 18 that will result in new television service to hundreds of thousands of viewers. Busse has presented nothing but make-weight arguments that are designed to serve the purpose of delay. No other party has objected to the proposed allotment or presented competing proposals for the use of Channel 24.


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3. Busse's argument that existing UHF allotments in Lincoln are "sufficient" has already been flatly rejected by the Commission. "We do not believe that the presence of vacant channels in [Lincoln] is a relevant factor . . . ." *Albion-Lincoln-Columbus Order*, 8 FCC Rcd at 2877 n.6.

4. Busse also argues that the allotment will interfere with the Commission's implementation plans for ATV. This allegation is completely unsupported by Busse, and is a rank "red herring." There are 24 *more* vacant UHF channels available at Albion, plenty of spectrum for ATV purposes.

Citadel is ready and willing to modify its application for Channel 18 to specify Channel 24. There is no reason for more delay. For the reasons stated herein and in the Notice of Proposed Rulemaking, the Table of Television Allotments should be amended to add Channel 24 to Albion.

Respectfully submitted,

By: 

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Steven H. Schulman \*  
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Dated: February 28, 1995

\* Admitted in Maryland only

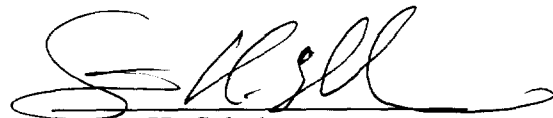
## CERTIFICATE OF SERVICE

I, Steven H. Schulman, hereby certify that the foregoing Reply Comments of Citadel Communications Company, Ltd. have been service via first class United States mail, postage prepaid, this 28th day of February, 1995, on the following:

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Washington, D.C. 20006

John A. Karousos, Chief\*  
Mass Media Bureau  
Allocations Branch  
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Washington, D.C. 20554



Steven H. Schulman

\* Delivered by hand